IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

R.S.M.M. Ltd.
Vs.
Ratan lal & Anr.

S.B. CIVIL WRIT PETITION NO.1040/2001 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 03rd November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.M.R. Singhvi]
Mr.Girish Joshi] Advocates for the petitioner.
Mr.D.K. Parihar, Advocate for the respondents.

BY THE COURT

Under challenge in this writ petition is the award dated 05th December, 2000 passed by the Industrial Tribunal-cum-

Labour Court, Jodhpur (in short Labour Court). Reference on an industrial dispute was made to the learned labour court by the appropriate Government on 07th February, 1996 on the question whether action of the petitioner management in terminating services of the respondent-workman from May, 1994 was legal and justified and if not what relief the respondent-workman was entitled to.

The case set up by the workman before the learned labour court was that he was appointed by the management on 13th April, 1993 on their lime project as an unskilled labour. The petitioner suddenly fell ill on 07th June, 1994 and therefore had to come to village Jaisalmer for treatment. When he reported back to attend his duty on 08th June, 1994, the management by a verbal order refused to allow him to join his duties and removed him from service. It was stated that removal of the workman was made in violation of Section 25-F of the Industrial Disputes Act, 1947 (in short 'the Act'). Absence of one day was for bona fide reason of the illness of the petitioner which could not be described as misconduct. Even otherwise,

the management was required to hold an inquiry if they wanted to remove him from service on the charge of his absence. After removal of the petitioner, the Project Manager of the management has appointed his relative Sonu in his place. It was therefore prayed that the action of the management be declared illegal and it be directed to reinstate him in service with full back wages and continuity in service.

The claim of the workman was contested by the management who in their reply stated that the workman was engaged as an unskilled casual labour on work basis as and when necessity arose. The workman left his duties on his own accord and did not turn up to work. It was denied that the management has appointed any one else after removal of the workman. The fact is that the workman himself absented from duties on 08th June, 1994 and did not come thereafter. It was prayed that the claim of the workman be rejected.

After recording evidence and hearing the parties, the learned labour court by its award dated 05th December, 2000

held that the workman had actually completed 240 days and therefore his removal was made in breach of Section 25-F of the Act. The learned labour court rejected the argument of the management that the workman abandoned the job. The learned labour court therefore held retrenchment of the workman to be illegal and further held him entitled to reinstatement with continuity in service and 50% back wages. Feeling aggrieved thereby, the petitioner-management has preferred this writ petition.

I have heard learned counsel for the parties and perused the record.

Mr. M.R. Signhvi the learned counsel for the petitioner has supported their case as pleaded before the learned labour court . In addition, Mr.M.R. Singhvi has argued that even if violation of Section 25-F of the Act is found to be proved at this belated stage after ten years, relief for reinstatement in the facts of the present case ought not to have been granted by the learned labour court particularly when already more than

six years had gone by when the award was passed and now 12 years have passed after the alleged retrenchment of the workman. According to Mr. Singhvi, the appointment of the workman was not made by any acceptable mode of recruitment and he was merely engaged on daily wages as an unskilled labour.

On the other hand, Shri D.K. Parihar argued that once when the retrenchment is held to be violative of Section 25-F, the remedy of reinstatement should follow as a matter of course. He has relied upon a Division Bench judgment of this Court in Rajasthan Agricultural University, Bikaner & Ors. vs. Labour Court & Anr. in D.B. Special Appeal No.265/2004 decided on 03rd September, 2004 wherein a Division Bench of this Court in the facts of that case upheld the order of reinstatement.

Having heard learned counsel for the parties and considered the documents on record, I find that even according to the details furnished by the management, the

respondent workman has worked for more than 240 days in the employment of the management during the calender year immediately preceding the date of his retrenchment. All those details have been enumerated by learned labour court on page 3 of its award. If number of weekly holidays are added to the period of 239 days admitted by the management, the workman would have completed more than 240 days. However, even according to the statement of claim submitted by the workman, he was appointed as unskilled labour, but there is no pleading to the effect that his appointment was made on regular basis by any acceptable mode of recruitment. No such evidence has been led by the workman either. The workman according to his own showing lastly worked up to the month of May, 1994 and already a period of twelve years have gone by since then. More than six years from that date had been expired when the learned labour court passed this award on 05th December, 2000. In the circumstances, directing reinstatement of the workman at this belated stage would not be appropriate.

In State of Rajasthan & Ors. vs. Rashid Mohammad

(supra) the Division Bench of this Court was dealing with the case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.02.1990 and was finally removed on 17.05.1994. The Division Bench while taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs.50,000/- as compensation for full and final settlement of all his claims. In doing so the learned Division Bench of this Court relied upon the various judgments of Hon'ble Supreme Court which may be summarized as under:-

> **(1)** In **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.** AIR 1979 SC 95, the Hon'ble Supreme Court held that the Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.
>
> **(2).** In **Chandu Lal Vs. The management of M/s. PAN American World Airways,** AIR 1985 SC 1128, the Apex Court, instead of granting the relief of reinstatement, granted compensation.

(3). In **Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra,** AIR 1994 SC 112, the Hon'ble Supreme Court considered the aspect of long lapse of time between the termination and the date of Award and held that the grant of compensation in lieu of reinstatement was proper.

(4). In **Sain Steel Products Vs. Naipal Singh & ors.,** AIR 2001 SCW 2426, the Hon'ble Apex Court granted a sum of Rs.50,000/- to the workman in lieu of reinstatement or back wages on the ground that there had been an inordinate delay as the services had been terminated long back.

(5). In **O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors.,** (1986) 4 SCC 337, the Hon'ble Supreme Court propounded the formula to award compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant therein, to be a reasonable amount to be awarded in lieu of reinstatement as the appellant therein had served for eight years.

(6). In **Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & Ors.,** AIR 1994 SC 131, the Hon'ble Supreme Court granted a lump sum amount of Rs.50,000/- as compensation in full and final settlement of the claim and in lieu of reinstatement and consequential benefits to the workman.

Another judgment in Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors. (supra), the Division Bench of this Court was dealing with a case in which the workman Arjun Singh was appointed on 01.01.1988 and was removed from service on 01.04.1990. Apart from this, similar case of two more workmen was also considered therein. The matter came to the learned Labour Court on a reference being made to it by the appropriate Government. The Labour Court found that the termination of workman was in violation of Section 25-F of the Industrial Disputes Act. However, instead of directing reinstatement of the workman it granted compensation in lieu of reinstatement. While dealing with the said case, the Division Bench of this Court made the following observations:-

> "**5.** The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again between date of termination of services of the appellants and as of now several years have3 gone by. In the circumstances the Labour Court and the learned Single Judge were right in not foisting the appellant on the employer after such long spells of time. The appellants cannot be

directed to be reinstated now as they have been out of touch with their respective jobs of long. It is well known that faculties rust when they are not used for long. An employee who is out of job for number of years, loses his proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years it will lead to complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.

6. We are conscious of the fact that the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of the industrial law, but reinstatement cannot be directed in every case. The question whether an employee should be reinstated or not depends upon various factors viz. (1) The nature of employment; (2) the period between the date of appointment and date of termination i.e. length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case a person is appointed for a short period of time without making him to through a process of selection and the gap between the date of termination and the award/conclusion of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act."

The Hon'ble Supreme Court in the case of Ratan Singh Vs. Union of India & Anr. reported in (1997) 11 SCC 396, wherein nearly 20 years had elapsed from the date when the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, while directing the payment of compensation in lieu of reinstatement observed as under:-

> "The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

The law on the subject is now well settled following various decisions of Hon'ble Supreme Court and this Court cited supra. Since the petitioner had worked for only about a year and that too about twelve years ago, in the facts of the case, the award of lump sum compensation in the sum of Rs.50,000/- would be an appropriate remedy in lieu of

reinstatement. The award passed by the learned labour court in so far as it directs reinstatement of the respondent workman with 50% back wages is set aside and instead a sum of Rs.50,000/- is awarded to the respondent workman in lieu of reinstatement which shall be paid to him within a period of three months. In the event of delay in making such payment beyond the period of three months, the respondents shall be entitled to interest @ 6% on such awarded amount from the date of this judgment till payment is actually made.

The writ petition is accordingly disposed of with no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-